

This letter discusses the sale for resale exemption as applied to veterinarians registered for Service Occupation Tax who transfer medicine to animals held for sale, as an incident of service. See 86 Ill. Adm. Code 130.1955. (This is a GIL.)

July 20, 2006

Dear Xxxxx:

This letter is in response to your letter dated November 18, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

My company represents INDIVIDUAL. INDIVIDUAL has requested that we seek a private letter ruling pertaining to his purchases of drugs and medicines transferred incident to veterinary services administered to racing horses. A copy of the power of attorney authorizing our representation is included in this request for a private letter ruling.

Statement of Facts:

INDIVIDUAL operates a veterinary practice in Illinois. His practice is predominantly involved (95%) with the on-site treatment of standard bred racing horses and brood mares. INDIVIDUAL's customers are racing stables that are in the business of raising, training, racing and ultimately selling racing horses in an effort to generate a profit. All of INDIVIDUAL's work with respect to treating race horses and brood mares is performed at a stable or race track. Most of the racing horses treated by INDIVIDUAL are sold at claiming races at Illinois horse racing tracks.

INDIVIDUAL purchases various drugs and medicines that are administered to racing horses or brood mares as a part of his veterinary practice.

The remaining 5% of INDIVIDUAL's practice involves treatment of pets. We are not seeking any rulings regarding purchases of drugs or medicines used in treating small animals.

Audit/Litigation History:

INDIVIDUAL is currently not the subject of any audit activity by the department nor does he have pending litigation before the department on this issue.

Previous Ruling Request:

Neither INDIVIDUAL nor FIRM has previously requested a ruling on this question nor has a ruling requested on the behalf of INDIVIDUAL been submitted and then withdrawn.

Relevant Documents:

There are no additional documents that are being presented relative to this request.

Relevant Sales Tax Law:

Effective October 1, 1975, there is an exemption in the Retailers' Occupation Tax Act for sales of farm chemicals. Among other things, farm chemicals are defined in the regulations to include serums, vaccines and other medicinal preparations used in the production and care of animals that are to be sold. [86 Ill. Adm. Code 130.1955] The Service Occupation Tax Act also includes an exemption for such items that are transferred incident to service in caring for animals that are to be resold. [86 Ill. Adm. Code 140.125(l)]. The department's regulation relating to veterinarians further supports the exemption. [86 Ill. Adm. Code 130.2165(a)]

The Illinois Use Tax contains an interim use exemption for tangible personal property that is purchased for resale and used prior to being resold as long as such property is otherwise available for sale during the interim use period. [86 Ill. Adm. Code 150.306(a)(1)].

Furthermore, effective May 31, 1995 the Retailers' Occupation Tax was amended to exempt sales of racing horses and horses used for breeding racing horses. [86 Ill. Adm. Code 130.1971(c)]

Statements in Support of Taxpayers Views:

Based on the facts presented and the application of the various sales and use tax acts, we have concluded that INDIVIDUAL's purchases of drugs and medicines that are administered to racing horses and brood mares are non-taxable purchases for resale.

We base this conclusion on the fact that INDIVIDUAL's customers are in the business of selling racing horses. As such, when INDIVIDUAL transfers tangible personal property incident to providing veterinary services to a horse that will be resold he is making a non-taxable transfer of such property for resale as authorized by the Service Occupation Tax Act. The same logic will also apply when INDIVIDUAL transfers tangible personal property during treatment of brood mares that will produce a racing horse that will ultimately be sold.

It could be argued that INDIVIDUAL's customers make a taxable use of a horse when entering them in a horse race for a prize. However, we conclude that such a use is an exempt interim use of the horse as allowed by the Illinois Use Tax law. As such, the racing of horses prior to sale would not disqualify the resale exemption as it applies to INDIVIDUAL 's transfer of drugs and medicines to such horses.

Statements Contrary to Taxpayers Views

We are not aware of any authorities contrary to taxpayers view.

Trade Secrets:

This request for ruling does not contain any trade secrets which must be redacted from public view.

Conclusion:

We are seeking an affirmation regarding our interpretation of the laws to the facts that we have presented. Specifically, INDIVIDUAL can purchase drugs and medicines that he will administer to racing horses and brood mares, claiming a purchase for resale.

If you or your staff have any questions or need additional clarification of the facts, please do not hesitate to contact me.

DEPARTMENT'S RESPONSE

The Department declines to issue a PLR in regard to the ruling requested. It is the Department's opinion that there are too many variable factors involved for a PLR. We hope that the following information is helpful.

The Department's Retailers' Occupation Tax regulation regarding "Farm Chemicals" at 86 Ill. Adm. Code 130.1955 provides that farm chemicals include any chemical product used in the production or care of animals that are to be sold. Examples of this include medicinal preparations. The Service Occupation Tax regulations at 86 Ill. Adm. Code 140.125(l) also states that the tax does not apply to medicinal products sold to veterinarians for retransfer as an incident to service in caring for animals that are to be sold or the products of which are to be sold. The Use Tax regulations at 86 Ill. Adm. Code 150.306 regarding "Interim Use and Demonstration Exemptions" provides that tangible personal property purchased by a retailer for resale, and used by the retailer or his agents prior to its ultimate sale at retail, is exempt from Use Tax, provided that the tangible personal property is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period.

Veterinarians are engaged in a service occupation subject to the Service Occupation Tax. If a veterinarian is registered and calculates his tax based on the separately stated price of the tangible personal property that he transfers incident to a service or based upon 50% of the selling price of the tangible personal property (but no less than cost), or is a registered de minimis serviceman and calculates his tax based upon the cost price of the tangible personal property that he transfers, he may claim an exemption from tax for the medicine that he purchases for resale when he purchases the medicine. It should be noted that unregistered de-minimis servicemen are considered the users of any tangible personal property transferred to their service customers and cannot claim the resale

exemption on such purchases. Therefore, the resale exemption is not available to unregistered de-minimis servicemen.

The unregistered de minimis serviceman incurring Use Tax liability should remit Use Tax to Illinois registered suppliers at the time of purchase. If the supplier is not registered to collect Use Tax, the de minimis serviceman must register with the Department for the limited purpose of self-assessing and remitting his Use Tax liability to the Department. Please note that such a de minimis serviceman cannot make tax free purchases for resale. Registration for the limited purpose of self-assessing and remitting Use Tax liability to the Department does not authorize de minimis servicemen incurring a Use Tax liability to provide Certificates of Resale to suppliers. A de minimis serviceman can provide a resale certificate only if he is registered with the Department as a retailer, serviceman or reseller.

For example, a veterinarian who is registered as a serviceman (this excludes unregistered de minimis servicemen) and that purchases medicine that he will transfer as an incident of service to an animal that is held for sale may claim the resale exemption when he purchases the medicine. When the veterinarian performs the service of administering medicine to an animal that will be sold, or the products of which will be sold, that transfer of medicine incident to a service may be made tax exempt. Even if the animal will be used in a taxable manner, such as as a racing horse, before it is sold, the transfer of medicine may be made tax exempt as a sale for resale if the horse is otherwise available for sale. The same is true when the veterinarian administers medicine to a brood mare whose colts are held for sale. This scenario does not work for a serviceman who is registered only for the limited purpose of self-assessing and remitting Use Tax liability to the Department.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote
Associate Counsel

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